

15567

AN ORDINANCE TO AMEND TITLE 5 OF THE CITY OF EL PASO MUNICIPAL CODE, BY ADDING THERETO CHAPTER 5.54, REGULATION OF SEXUALLY ORIENTED BUSINESSES; AND TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH OR CONTRARY THERETO.

WHEREAS, the City Council finds that sexually oriented businesses, as a category or establishments, are frequently used for unlawful sexual activities, including prostitution; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, and are associated with crime and the downgrading of property values; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of the City of El Paso; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, §8 of the Texas Constitution, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, the provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials; and

WHEREAS, Texas Local Government Code §243 authorizes the City to regulate sexually oriented businesses and to enforce such regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the following Chapter 5.54 titled "Sexually Oriented Businesses" be added to Title 5, BUSINESS TAXES, LICENSES AND REGULATIONS to read as follows:

5.54.010 Purpose and Findings.

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

This ordinance is based on evidence of the adverse secondary effects of adult uses that is within the common knowledge of municipalities and is widely reported in judicial opinions, media reports, land use studies, and crime impact reports made available to the City Council, several of which are set forth herein. Additionally, the City Council relies on repeated judicial findings of municipalities' reasonable reliance on this body of secondary effects evidence to support time, place, and manner regulations of sexually oriented businesses. The Council relies upon and incorporates the findings of secondary effects discussed in the following non-exhaustive list of cases from the U.S. Supreme Court: *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972).

The City Council also relies on relevant decisions of federal appellate and trial courts, including the discussion of secondary effects and relevant evidence contained therein: *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 2002 U.S. App. LEXIS 12202 (5th Cir., June 20, 2002); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J & B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *BGHA, LLC v. City of Universal City*, 2002 U.S. Dist. LEXIS 1669 (W.D. Tex. 2002).

The City further relies on reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977 ; Dallas, Texas - 1997; McCleary Report, Alliance, Ohio - 2002; Tucson, Arizona -

1990; Testimony, Warner-Robins, Georgia – 2000; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; St. Cloud, Minnesota – 1994; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota). Based on the cases and reports documenting the adverse impact of adult businesses, the Commission finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

(2) Sexual acts, including masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, including those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows. These sexual acts increase the risk to the public of sexually transmitted diseases.

(3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating.

5.54.020

Definitions.

A. “Adult Arcade” means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

B. “Adult Bookstore” or “Adult Video Store” means a commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, any one or more of the following:

1. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, digital recordings, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”; or

2. instruments, devices or paraphernalia that are designed for use in connection with “specified sexual activities.”

Businesses which feature NC-17 or R-rated video tapes, and NC-17 or R-rated motion pictures shall not be classified as an “Adult Bookstore” or “Adult Video Store” by virtue of their featuring such products.

C. “Adult Cabaret” means a commercial establishment that regularly features the offering to patrons of live entertainment that is distinguished by or characterized by an emphasis on displays of “specified anatomical areas” or “specified sexual activities.”

D. “Adult Motion Picture Theater” means a commercial establishment where, for any form of consideration, films, motions pictures, video cassettes, digital recordings, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

Businesses which feature NC-17 or R-rated video tapes, and NC-17 or R-rated motion pictures shall not be classified as an “Adult Motion Picture Theater” by virtue of their featuring such products.

E. “Applicant” means:

1. a person in whose name a license to operate a sexually oriented business will be issued;
2. each individual who signs an application for a sexually oriented business license as required by this chapter;
3. each individual who is an officer of a sexually oriented business for which a license application is made under this chapter, regardless of whether the individual’s name or signature appears on the application;
4. each individual who has a controlling interest in a sexually oriented business for which a license application is made under this chapter regardless of whether the individual’s name or signature appears on the application; and
5. each individual who is an Operator of a sexually oriented business for which a license application is made under this chapter, regardless of whether the individual’s name or signature appears on the application.

F. “Controlling interest” means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

G. "Conviction" means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or a foreign nation that has not been reversed, vacated, or pardoned. "Conviction" includes disposition of charges against a person by probation or deferred adjudication.

H. "Director," as used in this Chapter, means the Building Permits & Inspections Director.

I. "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of "specified anatomical areas" or "specified sexual activities."

J. "Employee" means any individual who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the individual is denominated an employee, independent contractor, agent, or otherwise. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

K. "Establishment" means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;
2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. the addition of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

L. "Hearing Officer" shall mean a qualified independent arbitrator agreed upon by the parties with costs shared equally.

M. "Licensee" means:

1. a person in whose name a license to operate a sexually oriented business has been issued; and
2. each individual listed as an applicant on the application for a license or who meets the definition for an Applicant.

N. “Nude Model Studio” means any place where a person who regularly appears in a state of nudity or displays “specified anatomical areas” is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, but shall not include a proprietary school licensed by the State of Texas or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

O. “Nude or State of Nudity” means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast below a point immediately above the top of the areola, or a state of dress that fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola.

P. “Operator” means any person on the premises who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business.

Q. “Operates or causes to be operated” means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business, as long as facts exist that would cause a reasonable person to conclude that the person is exercising substantial control over the functioning of the business.

R. “Patron” means any person who is allowed to enter a sexually oriented business in return for the payment of an admission fee or any other form of consideration or gratuity; or enters a sexually oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or is a member of and on the premises of a sexually oriented business operating as a private club.

S. “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

T. “Regularly Features” or “Regularly Shown” means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

U. “Semi-nude” or in a “Semi-nude Condition” means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

V. “Sexually Oriented Business” means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store,

adult motel, or other commercial enterprise the primary business of which is the offering of a service of the selling, renting, or exhibition of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

W. "Specified anatomical areas" means:

1. any of the following, or any combination of the following, when less than completely and opaquely covered:
 - a. any human genitals, pubic region, or pubic hair;
 - b. any buttock; or
 - c. any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or

X. "Specified sexual activities" means and includes any of the following:

1. the fondling or other erotic touching of exposed human genitals or anus.
2. sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
3. masturbation, actual or simulated; or
4. excretory functions as part of or in connection with any of the activities set forth in Paragraphs 1. through 3. of this subsection.

Y. "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

1. the sale, lease, or sublease of the business;
2. the transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business.

5.54.030 Classification.

Sexually oriented businesses are classified as follows:

1. adult arcades;
2. adult bookstores or adult video stores;
3. adult cabarets;
4. adult motion picture theatres; and

5. nude model studios.

5.54.040 License Required.

A. A person commits an offense if he or she operates a sexually oriented business without a valid license issued by the City for that particular sexually oriented business at that particular location, as required by the provisions of this chapter.

B. An application for a license must be made on a form provided by the Buildings Permits & Inspections Director ("Director").

C. Each person who is an "Applicant," as defined herein, must sign the application for a license. Each applicant must be qualified according to the provisions of this chapter.

D. A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this Ordinance where applicable.

5.54.050 Issuance of License

A. An application is deemed complete when the information required by subsections 1. through 8. below are included in the application. Upon the filing of a completed application for a sexually oriented business license, the Director shall issue a Temporary License to the applicant. The Temporary License shall not expire until the final decision of the City to deny or grant the license. Within twenty (20) days of the initial filing date of the completed application, the Director shall approve the issuance of a license to the applicant or issue to the applicant a letter of intent to deny the application. The Director shall approve the issuance of a license unless one or more of the following is found to be true:

1. An applicant is under 18 years of age.
2. An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
3. An applicant has falsely answered a question or request for information on the application form.
4. An applicant has been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the date the application is submitted.
5. Any fee required by this chapter has not been paid.
6. An applicant has been convicted of a crime:

a. involving:

(1) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

- (a) prostitution;
- (b) promotion of prostitution;
- (c) aggravated promotion of prostitution;
- (d) compelling prostitution;
- (e) obscenity;
- (f) sale, distribution, or display of harmful material to minor;
- (g) sexual performance by a child;
- (h) employment harmful to children; or
- (i) possession or promotion of child pornography.

(2) any of the following offenses as described in Chapter 21 of the Texas Penal Code:

- (a) public lewdness;
- (b) indecent exposure; or
- (c) indecency with a child.

(3) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

(4) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses

(5) or an offense committed in another jurisdiction if the predicate acts of the offense would constitute one of the foregoing Texas offenses, had the predicate acts been committed in Texas

b. for which:

(1) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense;

(2) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

7. Any applicant has been operating the proposed business as a sexually oriented business without a valid license issued under this chapter.

8. A diagram required under this Chapter to be submitted with the application has not been submitted.

c. The fact that a conviction is being appealed has no effect on the disqualification of the applicant under Subsection A. of this chapter.

B. If the Director denies issuance or renewal of an annual license, the applicant may not apply for or be issued a sexually oriented business license for one year after the date the denial becomes final or until any applicable time period required by Subsection A. has elapsed, whichever is later.

C. The Director, upon approving issuance of a sexually oriented business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action. Such notice shall state the effective date of the license, which shall be ten (10) days after the date the notice is mailed by certified mail. Any Temporary License or Provisional License shall expire on the effective date of the annual license. The notice shall state where the applicant must pay the license fee and obtain the license. The Director's approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this chapter and obtained possession of the license.

D. The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

5.54.060 Fees.

A. The annual fee for an initial sexually oriented business license is \$550; the fee for renewal of the license is \$350. Said fees shall be paid at the time that the application for an initial license or renewal of a license is filed with the City.

5.54.070 Inspection.

A. An applicant, licensee, agent, Operator, or employee of a sexually oriented business shall permit representatives of the Police Department, the City/County Health and Environmental District, the Fire Department, and the Building Permits & Inspections Department to inspect the premises of a sexually oriented business, for the purpose of ensuring compliance with this Chapter, at any time the business is occupied or open for business and at other reasonable times upon request. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or

excessive pattern of inspections. Nothing herein shall limit any search or inspection otherwise allowed by law.

5.54.080 Identification Records

- A. A person commits an offense if he or she operates a sexually oriented business without maintaining on the premises a current registration card or file that clearly identifies all employees of the sexually oriented business.
- B. The registration card or file must contain the following information for each employee:
 - 1. Full legal name.
 - 2. All aliases or stage names.
 - 3. Date of birth.
 - 4. A copy of the employee's driver's license or another government-issued identification card.
 - 5. Color photograph with a full-face view.
- C. All records maintained in compliance with this section must be retained at the sexually oriented business for at least ninety (90) days following the date of any voluntary or involuntary termination of the employee's employment or contract with the sexually oriented business.

5.54.090 Expiration of License

Each license, other than a Temporary License or Provisional License, shall expire one year from the date of issuance and may be renewed only by making application as provided in this chapter. An application for renewal shall be made at least seventy-five (75) days before the expiration date. In the event that an application for renewal is submitted less than seventy-five (75) days before the expiration date, the expiration of the license will not be affected by the pending application.

5.54.100 Suspension.

The City shall issue a written intent to suspend a license for a period not to exceed thirty (30) days if a licensee has knowingly violated any section of this chapter or has knowingly allowed an employee of the sexually oriented business to violate this chapter. The issuance of a notice of intent to suspend shall not be a prerequisite to issuance of a notice of intent to revoke per section 5.54.110.

5.54.110 Revocation.

A. The City shall issue a written intent to revoke a license if:

1. The licensee knowingly gave false information in the material submitted during the application process.
2. The licensee has knowingly allowed any of the criminal offenses listed in Section 5.54.050.A.6, for which a conviction has been obtained, to occur on the premises and the person or persons convicted were employees, as defined in this chapter, of the sexually oriented business at the time the offenses were committed.
3. The licensee knowingly operated or caused to be operated the sexually oriented business during a period of time when the licensee knew that the licensee's license was suspended.
4. The licensee has been convicted of an offense listed in this chapter for which the time period required in this chapter has not elapsed.
5. The licensee is delinquent in payment to the city taxes related to the sexually oriented business.
6. The licensee has knowingly violated this chapter (transfer of license) of this chapter.
7. The licensee knowingly or recklessly employed any person under the age of eighteen (18) years.
8. Two (2) or more causes of suspension occur within a twelve (12) month period.

B. The fact that a conviction is being appealed has no effect on the revocation of the license.

C. If the Director revokes a license, the licensee shall not apply for or be issued a sexually oriented business license for one year from the date revocation becomes effective, or until the appropriate number of years required under Section 5.54.050.A.6. has elapsed, whichever is later.

Section 5.54.120 Appeal

A. If the Director determines that facts exist justifying denial, suspension, or revocation of a license under this chapter, the Director shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the Director for the respondent. Within ten (10) days of receipt of such notice, the respondent may provide to the Director a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

If a response is not received by the Director within ten (10) days after respondent's receipt of the written notice to deny, suspend, or revoke, then the Director shall issue a written denial, suspension, or revocation, as applicable, within five (5) days thereafter. The denial, suspension, or revocation shall immediately be sent via certified mail to the respondent. The denial,

suspension, or revocation shall be final upon issuance for purposes of judicial appeal, but shall not take effect for ten (10) days after it is sent via certified mail to the respondent. The denial, suspension, or revocation shall include a statement advising the respondent of the right to immediately appeal such decision to any court of competent jurisdiction.

B. When a license is denied, suspended, or revoked, the applicant or licensee (aggrieved party) shall have the right to appeal or challenge such action to any court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the Director shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business and will expire upon the court's entry of a judgment on the aggrieved party's appeal or other action to restrain or otherwise enjoin the City's enforcement.

Section 5.54.130 Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated on the license.

Section 5.54.140 Additional Regulations for Sexually Oriented Businesses Featuring Live Nudity on Premises.

Nothing contained in this chapter is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or city ordinance. It shall be unlawful for an Operator to knowingly violate the following regulations or to allow, either knowingly or recklessly, an employee to violate the following regulations.

12. It shall be the duty of the operator, and of any employee, who discovers any person or patron violating the rules required to be posted to immediately escort such persons from the premises.

B. A person having a duty under this section commits an offense if he or she knowingly or recklessly fails to fulfill that duty.

Section 5.54.150 Exempt Business

The following are exempt from regulation under this chapter:

- (1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002 of the Local Government Code;
- (2) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or
- (3) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

Section 5.54.160 Minors.

- A. A sexually oriented business shall not employ any person under the age of eighteen (18) years.
- B. A sexually oriented business shall not allow any person under the age of eighteen (18) years on the premises.
- C. A person commits an offense if the person knowingly allows a person under the age of eighteen years on the premises of a sexually oriented business.

Section 5.54.170 Hours of Operation

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m.

Section 5.54.180 Culpable Mental State Required to Prove Violation or Licensee Liability.

- A. Violations of this Chapter shall require the culpable mental state specified in the definition or description of the violation. If no culpable mental state is specified, pursuant to § 6.02(c) of the Texas Penal Code, intent, knowledge, or recklessness suffices to establish criminal responsibility.
- B. Unless a different culpable mental state is specified in the definition of a violation of this Chapter, an act by an employee that constitutes a violation of this Chapter shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, as applicable, only if an officer, director, person with a controlling interest, or an Operator knowingly or recklessly allowed such act to occur. For purposes of this Chapter, the terms “knowingly,” “intentionally,” and “recklessly” shall have the meanings prescribed to them in Chapter 6 of the Texas Penal Code. It shall be a defense to liability under this Chapter that the person to whom the violative act is imputed was powerless to prevent the act.

Section 5.54.190 Failure of City to Meet Time Frame Not to Risk Applicant or Business Rights.

In the event that a City official is required to take an act or do a thing pursuant to this Chapter, and fails to take such act or do such thing, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City under this Chapter, but not completed, includes approval of condition(s) necessary for approval by the City of an applicant or licensee's application for a sexually oriented business license (including a renewal), the applicant or licensee shall be deemed to have satisfied the condition(s) for which approval was sought under this Chapter.

Section 5.54.200 Penalties and Enforcement.

A person who commits an offense under this chapter shall be guilty of a Class A misdemeanor pursuant to Texas Local Government Code § 243.010. A person violating a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation constituting the offense is committed, continued, or permitted.

Section 5.54.210 Injunction

In addition to any criminal penalties sought, the City may sue for an injunction to prohibit the violation of any provision of this chapter as provided by Section 243.010(a) of the Texas Local Government Code.

Section 5.54.220 Applicability of Other Laws

This chapter shall be cumulative of all other ordinances of the city.

Section 5.54.230 Severability.

Each section and provision of this chapter are hereby declared to be independent divisions and subdivisions, and notwithstanding Any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Specifically, if any procedural aspect of this

ordinance is deemed invalid, it is the legislative intent of the City that the substantive aspects of this Chapter remain in force.

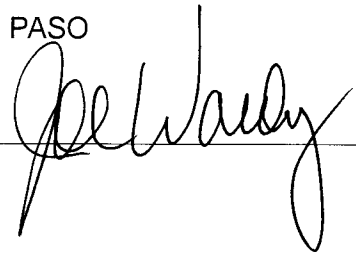
Section 5.54.240 Effective Date.

Upon adoption, the provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this chapter. All existing sexually oriented businesses are hereby granted a De Facto Temporary License to continue operation for a period of ninety (90) days following the effective date of this chapter. Within said ninety (90) days, all sexually oriented businesses must make application for a license pursuant to this chapter. Within said ninety (90) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this chapter.


PASSED AND APPROVED this 30th day of September, 2003.

CITY OF EL PASO

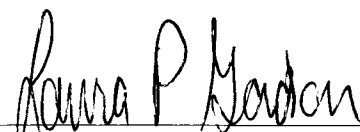
Joe Wardy
Mayor



ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Laura P. Gordon
Deputy City Attorney